

ST 95-25

Tax Type: SALES TAX

Issue: Books and Records Insufficient
Computer Software Exemption

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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THE DEPARTMENT OF REVENUE      )  
OF THE STATE OF ILLINOIS      )      Docket #  
                                )  
                                )      IBT #  
                                )  
v.                              )  
                                )  
XXXXXX                        )      Karl W. Betz  
                                )      Administrative Law Judge  
Taxpayer                      )  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES XXXXX, for XXXXX, (hereinafter the "Taxpayer").

SYNOPSIS This cause came on for hearing following a sales/use tax audit performed upon Taxpayer by the Illinois Department of Revenue (hereinafter the "Department") for the period of January 1, 1987 through December 31, 1989. After completion of her audit work the auditor reviewed her findings with a representative of Taxpayer who indicated his disagreement with them.

The auditor then did cause to be issued a Correction of Returns and this served as the basis for the assessment whose timely protest by Taxpayer led to this contested case.

Prior to hearing a prehearing conference was conducted wherein Taxpayer submitted documentation relative to certain transactions the auditor had assessed.

The contested issue is if Taxpayer has submitted documents sufficient to exempt the transactions whose taxability it still disputes.

Prior to the scheduled hearing, the documents submitted at the prehearing were reviewed by the administrative law judge in conjunction

with the audit supervisor and the decision was made to accept many of them. This resulted in a tax reduction of \$2,690.15. Then Taxpayer through counsel submitted a letter on December 13, 1994 waiving its formal appearance at hearing and stating they were submitting the case to the administrative law judge upon their previously submitted documents.

After reviewing this matter, I recommend the issue be resolved partly in favor of the Taxpayer and partly in favor of the Department.

FINDINGS OF FACT

1. Taxpayer conducted business operations in Illinois during the audit period as a distributor and retailer of computer printers and related parts and supplies. (Dept. Group Ex. No. 1).

2. Taxpayer's corporate headquarters was in Kansas City, Missouri. (Dept. Grp. Ex. No. 1).

3. Taxpayer maintained a sales office in Des Plaines, Illinois, out of which orders were processed by salespeople who sent them to headquarters for credit approval and order acceptance. (Dept. Grp. Ex. No. 1).

4. The Department issued Notice of Tax Liability (NTL) No. XXXXX on November 28, 1990 for \$11,265.00, inclusive of tax, penalty and interest. (Dept. Grp. Ex. No. 1).

5. Taxpayer remitted the tax prior to issuance of the NTL so the normal statutory penalty associated with a Retailers' Occupation Tax Act Section 4 NTL was not assessed. The \$548.00 "penalty" on the NTL is actually an amount of tax Taxpayer overcollected from its customers but did not remit to the Department. (Dept. Grp. Ex. No. 1).

CONCLUSIONS OF LAW The only transactions remaining in dispute are ones involving disallowance of the resale deduction, or the auditor's assessment of local and Regional Transportation Authority (RTA) Retailers' Occupation Tax on certain sales where the auditor determined the merchandise item being sold was first shipped to Taxpayer's Illinois

location before delivery to the customer but only 5% State tax was charged.

Taxpayer has submitted a statement saying all deliveries for transactions on which local tax was assessed were shipped directly to the customer. However, this by itself has no more probative value than the statement made by the auditor in her report that for certain sales the merchandise was first shipped to Taxpayer's Illinois location before delivery to the customer. Therefore the only acceptable evidence here are shipping documents showing delivery direct to customers as required by Section 7 of the Retailers' Occupation Tax Act. (35 ILCS 120/7). As Taxpayer has submitted shipping documents on certain of these transactions, I recommend the local taxes attributable to the XXXXX sales be deleted from the final assessment.

For certain other transactions where the Department assessed the 5% State tax, Taxpayer requests they be allowed the resale deduction based on its submission of photocopies of Retailers' Occupation Tax certificates of registration or resale numbers held by the customer. This is not sufficient to establish the deduction because statutory and regulatory provisions require the customer submit a resale certificate. (35 ILCS 120/2c; 86 Admin. Code ch. I, Secs. 130.1401 and 1405).

RECOMMENDATION Based upon my aforementioned findings and conclusions, I recommend the Department reduce NTL No. XXXXX and issue a final assessment.

Karl W. Betz
Administrative Law Judge